

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 16 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

LON LEE,

Defendant - Appellant.

No. 06-30611

D.C. No. CR-03-00471-JAR

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
James A. Redden, District Judge, Presiding

Argued and Submitted September 26, 2007
Portland, Oregon

Before: SCHROEDER, Chief Circuit Judge, SILVERMAN and BYBEE, Circuit
Judges.

Lon Lee appeals the district court's order dismissing her Petition of Interest
in a criminal forfeiture under 21 U.S.C. § 853(n) of two pieces of real estate seized
after the conviction of Lee's ex-husband, Vinh Tran. The district court dismissed

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

the petition pursuant to Fed. R. Civ. P. 12(b)(6), holding that Lee failed to allege sufficient facts to establish that she had a vested property interest in the property subject to forfeiture, and thus, standing. We agree with the district court.

To establish standing, Lee claims two interests in the seized property under Oregon law: (1) that she is the beneficiary of a resulting trust, and (2) that she qualifies as the beneficiary of a constructive trust.

The person claiming the benefit of a resulting trust typically must have contributed some “valuable consideration” toward the acquisition of the disputed property even though another party holds legal title. *Certified Mortgage Co. v. Shepherd*, 838 P.2d 1082, 1085 (Or. Ct. App. 1992); *see also Hurlbutt v. Hurlbutt*, 585 P.2d 724, 726 (Or. Ct. App. 1978) (asking whether “the party who *furnished the purchase price of a parcel of land* contemplated that such property would inure to his own benefit and not that of the record title holder and that the title was taken in the name of another for some incidental purpose”) (emphasis added). Lee has not alleged that she contributed anything of value, monetary or otherwise, toward the purchase of the disputed properties. Rather, she alleges only an indirect contribution – her work as a housewife allowed her ex-husband to amass wealth, which, in turn, allowed him to acquire the properties. This is insufficient to create

a resulting trust since the contributions were not part of the land conveyance transaction.

A constructive trust arises “[w]here a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it.” *Barnes v. E. & W. Lumber Co.*, 287 P.2d 929, 948 (Or. 1955) (citation omitted); *see also Sheldon v. Sheldon*, 987 P.2d 1229, 1234 (Or. Ct. App. 1999) (asking whether the person who “by wrongful conduct has obtained or holds legal right to property . . . ought not to enjoy [it] in good conscience and equity.”). Lee does not allege that Tran’s holding of title to the Belmont and Virginia properties was improper or that he had an equitable duty to convey title to her. Rather, the thrust of Lee’s petition is her claim of partial ownership interest.

The district court correctly concluded that the facts alleged do not support the asserted legal theories. As counsel has indicated that appellant cannot assert another theory, the judgment of the district court is **AFFIRMED**.